



GFR LEGAL ISSUES

DAVE RILEY
DEPUTY DISTRICT COUNSEL
(CONTRACTS)



Introduction

- **BRING YOU UP TO DATE ON ISSUES THAT HAVE HIT MY DESK W/I LAST YEAR**
- **TAKE A LOOK AT A FEW RECENT CASES**
- **STRESS CONSISTENT APPLICATION OF REGULATIONS**



Topics of Discussion

- 1. IMPORTANCE OF REGULATORY DEFINITIONS
- 2. WHAT DEVIATIONS FROM THESE DEFINITIONS ARE ALLOWABLE?
- 3. PRACTICAL SUGGESTIONS
 - How to determine “aircraft” “in the open”
- 4. PERSONAL LIABILITY ISSUE



FIRST ISSUE

- **WHAT KIND OF CONTRACT IS INVOLVED?**
- **GFR Clause usually applies to “Negotiated Fixed Price contracts for aircraft production, modification, maintenance, repair, or overhaul.”**
- **Aircraft Flight Risk clause usually applies to “cost reimbursement contracts”.**
- **See DFARS 228.370**



REGULATORY DEFINITIONS

- **“AIRCRAFT” - DFARS 252.228-7001(a)(1) & 228.370(b)(2)(i)**
 - ENGINE/WING OR EQUIVELANT
 - FURNISHED BY GOV’T
- **“IN THE OPEN” - DFARS 252. 228-7001(a)(5) & 228.370(b)(2)(ii)**
 - outside Contractor facility
 - always when Gov’t furnished aircraft



Practical Application

- For aircraft look for:
 - 1. A wing and an engine while in initial production
 - 2. An initial DD250 and tail number for retrofit/overhaul aircraft (i.e. a GFA))
- For “in the open” look for:
 - 1. Places outside or listed on schedule while in initial production
 - Gov’t Furnished Aircraft (GFA) while in Contractor Care, Custody, and Control



DEVIATIONS

- DFARS 228.370 - GFR Clause **mandatory** - unless:
 - FMS sales
 - cost of insurance less than \$500 and KO agrees to recognize insurance costs
- DFARS 228.370(b) (2) Allows for broadening of definitions (not narrowing) i.e. wing/engine = rotor-blade/engine
- remember: look at the contract for the clause; also look at the contract type to analyze whether the clause is mandatory (commercial item contracts?)



Real Life Issues

- PCOs removing GFR Clause w/o a FAR/DFAR deviation (requires business case)
 - what effect does this have on reporting safety?
- Gov't mistakenly handling GFR issues under the property clause?
 - Do we lose visibility on important aircraft history?



More Real Issues

- **Look for issues of willful misconduct or lack of good faith by Contractor management**
 - **are sound industrial practices required or are corners being cut?**
- **Look for poor workmanship issues**
 - **is aircraft in “open” under unreasonable conditions?**
 - **normally uninsurable risk (i.e. employee criminal misconduct)**



What This Means

- Uniform application of GFR Clause throughout DCMC is critical
- Work these issues with your local counsel or GFR legal experts
 - East - Leigh Owens (697-6264)
 - West - Dave Riley (929-6202)



Next Steps

- **Make sure you open a dialogue between the GFR world and the Government Property Administrators**
- **Seek common understanding of where the GFR clause applies and where the Gov't Property Clause applies**



Recent GFR Cases

- **Vought Aircraft Company - ASBCA No. 47357 - 12/27/99**
- **Appeal of LTV Aerospace - ASBCA No. 37571, 38039, 45808 - 7/26/93**

- **Damage to temporarily installed contractor equipment does not fall w/i GFR clause**

- **Cases apply to GFA issues only**



Personal Liability Issues

- **What do you do when you are sued in your personal capacity?**
 - Call your local counsel ASAP
 - Inform your Command
 - Begin a draft statement as to how you were operating w/i the scope of your employment -don't finalize until reviewed by counsel and Command



More - Personal Liability

- **What happens next?**
 - **Your “Scoping” Narrative and Command endorsement affidavit goes through counsel to US Attorney**
 - **If US ATTY agrees you were w/i scope - US will defend you (usually a quick process)**
 - **If sued in state court - removal motion to federal court**
 - **Substitution Motion - US inserts itself as defendant in place of you**



WRAP-UP

- QUESTIONS?
- COMMENTS?
- CONCERNS?
- WAR STORIES...